

58-1-101. Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act."

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-102. Definitions.

For purposes of this title:

- (1) "Ablative procedure" is as defined in Section 58-67-102.
- (2) "Cosmetic medical procedure":
 - (a) is as defined in Section 58-67-102; and
 - (b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.
- (3) "Department" means the Department of Commerce.
- (4) "Director" means the director of the Division of Occupational and Professional Licensing.
- (5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (6) "Executive director" means the executive director of the Department of Commerce.
- (7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.
- (8) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove living tissue.
 - (ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.
- (b) "Nonablative procedure" does not include:
 - (i) a superficial procedure;
 - (ii) the application of permanent make-up; or
 - (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.
- (9) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.
- (10) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).
- (11) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

Amended by Chapter 362, 2012 General Session

58-1-103. Division created to administer licensing laws.

There is created within the Department of Commerce the Division of

Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-104. Director of division -- Appointment -- Duties.

(1) The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.

(2) The director shall perform all duties, functions, and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-105. Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions, and responsibilities of the division.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-106. Division -- Duties, functions, and responsibilities.

(1) The duties, functions, and responsibilities of the division include the following:

- (a) prescribing, adopting, and enforcing rules to administer this title;
- (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
- (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;
- (d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
- (e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
- (f) giving public notice of board meetings;
- (g) keeping records of board meetings, proceedings, and actions and making those records available for public inspection upon request;
- (h) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;
- (i) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;
- (j) preparing and submitting to the executive director a budget of the expenses for the division;

(k) establishing the time and place for the administration of examinations; and
(l) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

(2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(l), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.

(b) A request under Subsection (3)(a) is limited to providing information on only one licensee per request.

(c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a).

Amended by Chapter 382, 2008 General Session

58-1-107. Applicability -- Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.

Enacted by Chapter 297, 1993 General Session

58-1-108. Adjudicative proceedings.

(1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63G-4-103(1).

(2) Before proceeding under Section 63G-4-502, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.

(3) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, a warning or final disposition letter which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding.

Amended by Chapter 382, 2008 General Session

58-1-109. Presiding officers -- Content of orders -- Recommended orders -- Final orders -- Appeal of orders.

(1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to

Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.

(2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63G-4-102(4), Sections 63G-4-204 through 63G-4-207, and 63G-4-209.

(3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.

(4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.

(5) (a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.

(b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).

(6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.

(7) If the director or the director's designee does not issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or the director's designee.

(8) The final order of the director may be appealed by filing a request for agency review with the executive director or the executive director's designee within the department.

(9) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

Amended by Chapter 382, 2008 General Session

58-1-110. Legislative review in Title 58, Occupations and Professions.

Legislation proposing the licensing or regulation of an occupation or profession under Title 58, Occupations and Professions, that is not currently subject to licensing or regulation under Title 58, Occupations and Professions:

(1) may not be enacted by the Legislature unless:

(a) a proposal to license or regulate the occupation or profession has been reviewed by the Occupational and Professional Licensure Review Committee as described in Title 36, Chapter 23, Occupational and Professional Licensure Review Committee Act; or

(b) the proposed legislation contains a provision that expressly exempts the legislation from the review requirement of Subsection (1)(a);

(2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1, Legislative Oversight and Sunset Act; and

(3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after the effective date of the legislation.

Enacted by Chapter 323, 2013 General Session

58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies -- Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in professional school that teaches continuing education prohibited.

(1) (a) (i) The executive director shall appoint the members of the boards established under this title.

(ii) In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.

(b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.

(c) (i) The name of each person appointed to a board shall be submitted to the governor for confirmation or rejection.

(ii) If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (1)(a).

(2) (a) (i) Except as required by Subsection (2)(b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(ii) Upon the expiration of the term of a board member, the board member shall continue to serve until a successor is appointed, but for a period not to exceed six months from the expiration date of the member's term.

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A board member may not serve more than two consecutive terms, and a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.

(d) (i) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(ii) After filling that term, the replacement member may be appointed for only

one additional full term.

(e) The director, with the approval of the executive director, may remove a board member and replace the member in accordance with this section for the following reasons:

- (i) the member fails or refuses to fulfill the responsibilities and duties of a board member, including attendance at board meetings;
- (ii) the member engages in unlawful or unprofessional conduct; or
- (iii) if appointed to the board position as a licensed member of the board, the member fails to maintain a license that is active and in good standing.

(3) A majority of the board members constitutes a quorum. A quorum is sufficient authority for the board to act.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) Each board shall annually designate one of its members to serve as chair for a one-year period.

(6) A board member may not be a member of the faculty of, or have a financial interest in, a vocational or professional college or school that provides continuing education to any licensee if that continuing education is required by statute or rule.

Amended by Chapter 262, 2013 General Session

58-1-202. Boards -- Duties, functions, and responsibilities.

(1) The duties, functions, and responsibilities of each board include the following:

- (a) recommending to the director appropriate rules;
- (b) recommending to the director policy and budgetary matters;
- (c) approving and establishing a passing score for applicant examinations;
- (d) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing;
- (e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents;
- (f) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director; and
- (g) in accordance with Subsection (3), each board may recommend to the appropriate legislative committee whether the board supports a change to the licensing act.

(2) Subsection (1) does not apply to boards created in Title 58, Chapter 55, Construction Trades Licensing.

(3) (a) This Subsection (3) applies to the following:

- (i) Chapter 5a, Podiatric Physician Licensing Act;

- (ii) Chapter 16a, Optometry Practice Act;
- (iii) Chapter 17b, Pharmacy Practice Act;
- (iv) Chapter 24b, Physical Therapy Practice Act;
- (v) Chapter 28, Veterinary Practice Act;
- (vi) Chapter 31b, Nurse Practice Act;
- (vii) Chapter 40a, Athletic Trainer Licensing Act;
- (viii) Chapter 44a, Nurse Midwife Practice Act;
- (ix) Chapter 67, Utah Medical Practice Act;
- (x) Chapter 68, Utah Osteopathic Medical Practice Act;
- (xi) Chapter 69, Dentist and Dental Hygienist Practice Act;
- (xii) Chapter 70a, Physician Assistant Act;
- (xiii) Chapter 71, Naturopathic Physician Practice Act; and
- (xiv) Chapter 73, Chiropractic Physician Practice Act.
- (b) Subsection (1)(g) does not:
 - (i) require a board's approval to amend a practice act; and
 - (ii) apply to technical or clarifying amendments to a practice act.

Amended by Chapter 259, 2012 General Session

58-1-203. Duties, functions, and responsibilities of division in collaboration with board -- Construction Services Commission.

(1) The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:

- (a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division;
- (b) prescribing license qualifications;
- (c) prescribing rules governing applications for licenses;
- (d) providing for a fair and impartial method of examination of applicants;
- (e) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;
- (f) establishing advisory peer committees to the board and prescribing their scope of authority; and
- (g) establishing conditions for reinstatement and renewal of licenses.

(2) Notwithstanding Subsection (1), the duties, functions, and responsibilities of the division outlined in Subsection (1) shall, instead, be performed by the Construction Services Commission for all purposes of Title 58, Chapter 55, Utah Construction Trades Licensing.

Amended by Chapter 181, 2011 General Session

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's Social

Security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's Social Security number is a private record under Subsection 63G-2-302(1)(i).

(2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Amended by Chapter 426, 2013 General Session

58-1-301.5. Division access to Bureau of Criminal Identification records.

(1) The division shall have direct access to criminal background information maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for background screening of persons who are applying for licensure, licensure renewal, licensure reinstatement, or relicensure, as required in:

- (a) Section 58-17b-307 of Title 58, Chapter 17b, Pharmacy Practice Act;
 - (b) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;
 - (c) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;
 - (d) Section 58-55-302 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, as it applies to alarm companies and alarm company agents;
 - (e) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act;
- and

(f) Section 58-64-302 of Title 58, Chapter 64, Deception Detection Examiners Licensing Act.

(2) The division's access to criminal background information under this section:

- (a) shall meet the requirements of Section 53-10-108; and
- (b) includes convictions, pleas of nolo contendere, pleas of guilty or nolo contendere held in abeyance, dismissed charges, and charges without a known disposition.

Amended by Chapter 262, 2013 General Session

58-1-301.7. Change of information.

(1) (a) An applicant, licensee, or certificate holder shall send the division a signed statement, in a form required by the division, notifying the division within 10 business days of a change in mailing address.

(b) When providing a mailing address, the individual may provide a post office box or other mail drop location.

(c) In addition to providing a mailing address, an applicant, licensee, or certificate holder may provide to the division, in a form required by the division, an email address and may designate email as the preferred method of receiving notifications from the division.

(2) An applicant, licensee, or certificate holder is considered to have received a notification that has been sent to the most recent:

(a) mailing address provided to the division by the applicant, licensee, or certificate holder; or

(b) email address furnished to the division by the applicant, licensee, or certificate holder, if email has been designated by the applicant, licensee, or certificate holder as the preferred method of receiving notifications from the division.

Amended by Chapter 262, 2013 General Session

58-1-302. License by endorsement.

(1) The division may issue a license without examination to a person who has been licensed in a state, district, or territory of the United States, or in a foreign country, where the education, experience, and examination requirements are, or were at the time the license was issued, substantially equal to the requirements of this state.

(2) Before a person may be issued a license under this section, the person shall produce satisfactory evidence of the person's identity, qualifications, and good standing in the occupation or profession for which licensure is sought.

Amended by Chapter 262, 2013 General Session

58-1-303. Temporary license.

(1) (a) The division may issue a temporary license to a person who has met all license requirements except the passing of an examination. In this case:

(i) the licensee shall take the next available examination; and

(ii) the temporary license automatically expires upon release of official examination results if the applicant fails the examination.

(b) The division may issue a temporary license to a person licensed in another state or country who is in Utah temporarily to teach or assist a Utah resident licensed to practice an occupation or profession under this title.

(c) The division may issue a temporary license to a person licensed in another state who met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure of this state at the time the license was

obtained in the other state, upon a finding by the division, in collaboration with the appropriate board, that the issuance of a temporary license is necessary to or justified by:

(i) a local or national emergency or any governmental action causing an unusual circumstance that might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued;

(ii) a lack of necessary available services in any community or area of the state from an occupation or profession licensed under this title, if the lack of services might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued; or

(iii) a need to first observe an applicant for licensure in this state in a monitored or supervised practice of the applicant's occupation or profession before a decision is made by the division either to grant or deny the applicant a regular license.

(2) The division may not issue a temporary license to a person who qualifies for one under Subsection (1)(a) more than three consecutive times within the three-year period immediately following the issuance of the first temporary license.

(3) The division may not issue a temporary license to a person solely because there is a competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by the absence of a licensed person, unless in addition there is or will be a material risk presented to the public health, safety, or welfare.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-304. Restricted license.

(1) The division may issue a restricted or probationary license to an applicant for licensure, renewal, or reinstatement of licensure if:

(a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and

(b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions or conditions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare.

(2) Issuance of a restricted or probationary license is considered a partial denial of licensure that is subject to agency review.

Amended by Chapter 262, 2013 General Session

58-1-305. Inactive license.

(1) The division may adopt rules permitting inactive licensure. The rules shall specify the requirements and procedures for placing a license on inactive status, the length of time a license may remain on inactive status, and the requirements and procedures to activate an inactive license.

(2) Except as otherwise specified by rule, an inactive licensee has no right or privilege to engage in the practice of the licensed occupation or profession.

Enacted by Chapter 297, 1993 General Session

58-1-306. Surrender of license.

(1) The division may, by written agreement, accept the voluntary surrender of a license.

(2) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license does not foreclose the division from pursuing additional disciplinary or other action authorized under this title or in rules adopted under this title.

(3) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license terminates all rights and privileges associated with the license.

(4) Unless otherwise stated in the written agreement, the surrendered rights and privileges of licensure may be reacquired only by reapplying for licensure and meeting the requirements for a new or reinstated license set forth under this title or in rules adopted under this title.

(5) Unless otherwise stated in the written agreement, documentation of tender and acceptance of a voluntary surrender of a license is a public record.

(6) Unless otherwise stated in the written agreement, when a tender and acceptance of a voluntary surrender of a license occurs while adjudicative proceedings are pending against the licensee for unprofessional or unlawful conduct, the division may report the surrender of license to appropriate state and federal agencies and licensing data banks.

Enacted by Chapter 297, 1993 General Session

58-1-307. Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods;

(j) a law enforcement officer, as defined under Section 53-13-103, who:

(i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;

(ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and

(iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments; and

(k) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

(i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and

(ii) the license is current and the spouse is in good standing in the state of licensure.

(2) (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.

(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:

(a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;

(b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for individuals who are licensed under this title as:

(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;

(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;

(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;

(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and

(vii) a physician assistant under Chapter 70a, Physician Assistant Act;

(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302;

(d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;

(e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and

(f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):

(a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;

(b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and

(c) must be employed by or volunteering for:

(i) a local or state department of health; or

(ii) a host entity as defined in Section 26-49-102.

(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:

(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or

(b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:

(i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or

(ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:

(A) a pharmacy;

(B) a prescribing practitioner;

(C) a licensed health care facility;

(D) a federally qualified community health clinic; or

(E) a governmental entity for use by a community more than 50 miles from a person described in Subsections (6)(b)(ii)(A) through (D).

(7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:

(a) received from the strategic national stockpile to local health departments; and

(b) from local health departments to emergency personnel within the local health departments' geographic region.

(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:

(a) coordinate the distribution of:

(i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and

(ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;

(b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient, as defined in Section 26-6-2, without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's patient; and

(c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:

(i) is working in a triage situation;

(ii) is receiving preventative or medical treatment in a triage situation;

(iii) does not have coverage for the prescription in the individual's health

insurance plan;

(iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or

(v) otherwise has a direct impact on public health.

(9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8).

Amended by Chapter 150, 2012 General Session

58-1-308. Term of license -- Expiration of license -- Renewal of license -- Reinstatement of license -- Application procedures.

(1) (a) Each license issued under this title shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) (a) The expiration date of a license shall be shown on the license.

(b) A license that is not renewed prior to the expiration date shown on the license automatically expires.

(c) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity.

(d) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.

(e) Expiration of licensure is not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

(3) (a) The division shall notify each licensee in accordance with procedures established by rule that the licensee's license is due for renewal and that unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.

(b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:

(i) continuing education;

(ii) continuing competency;

(iii) quality assurance;

(iv) utilization plan and protocol;

(v) financial responsibility;

(vi) certification renewal; and

(vii) calibration of equipment.

(4) (a) (i) An application for renewal that complies with Subsection (3) is complete.

(ii) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the

qualifications for continued licensure.

(b) (i) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees.

(ii) If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(c) The application procedures specified in Subsection 58-1-301(2), apply to renewal applications to the extent they are not in conflict with this section.

(5) (a) Any license that is not renewed may be reinstated at any time within two years after nonrenewal upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Section 63J-1-504, and upon submission of documentation showing completion of or compliance with renewal qualifications.

(b) The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.

(c) Except as otherwise provided by rule, a license that is reinstated no later than 120 days after it expires shall be retroactively reinstated to the date it expired.

(6) (a) If not reinstated within two years, the holder may obtain a license only if the holder meets requirements provided by the division by rule or by statute for a new license.

(b) Each licensee under this title who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States may reinstate the licensee's license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any time within six months after reestablishing domicile within Utah or terminating full-time government service.

Amended by Chapter 183, 2009 General Session

58-1-309. Laws and rules examination.

In addition to qualifications for licensure or renewal of licensure enumerated in specific practice acts under this title, the division may by rule require an applicant to pass an examination of the laws and rules relevant to the occupation or profession to ensure familiarity with these laws and rules.

Enacted by Chapter 297, 1993 General Session

58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time limitations -- Sanctions.

(1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title.

(2) The division may refuse to issue a license to an applicant and may refuse to

renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the license of a licensee for the following reasons:

(a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;

(b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title;

(c) the applicant or licensee has been determined to be mentally incompetent by a court of competent jurisdiction; or

(d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a result of a mental or physical condition, when the condition demonstrates a threat or potential threat to the public health, safety, or welfare.

(3) A licensee whose license to practice an occupation or profession regulated by this title has been suspended, revoked, placed on probation, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, probation, or restriction.

(4) The division may issue cease and desist orders to:

(a) a licensee or applicant who may be disciplined under Subsection (1) or (2);

(b) a person who engages in or represents that the person is engaged in an occupation or profession regulated under this title; and

(c) a person who otherwise violates this title or a rule adopted under this title.

(5) The division may impose an administrative penalty in accordance with Section 58-1-502.

(6) (a) The division may not take disciplinary action against a person for unprofessional or unlawful conduct under this title, unless the division enters into a stipulated agreement or initiates an adjudicative proceeding regarding the conduct within four years after the conduct is reported to the division, except under Subsection (6)(b).

(b) The division may not take disciplinary action against a person for unprofessional or unlawful conduct more than 10 years after the occurrence of the conduct, unless the proceeding is in response to a civil or criminal judgment or settlement and the proceeding is initiated within one year following the judgment or settlement.

Amended by Chapter 262, 2013 General Session

58-1-402. Administrative review -- Special appeals boards.

(1) (a) Any applicant who has been denied a license to practice on the basis of credentials, character, or failure to pass a required examination, or who has been refused renewal or reinstatement of a license to practice on the basis that the applicant does not meet qualifications for continued licensure in any occupation or profession under the jurisdiction of the division may submit a request for agency review to the executive director within 30 days following notification of the denial of a license or refusal to renew or reinstate a license.

(b) The executive director shall determine whether the circumstances for denying an application for an initial license or for renewal or reinstatement of a license would justify calling a special appeals board under Subsection (2). The executive director's decision is not subject to agency review.

(2) A special appeals board shall consist of three members appointed by the executive director as follows:

(a) one member from the occupation or profession in question who is not on the board of that occupation or profession;

(b) one member from the general public who is neither an attorney nor a practitioner in an occupation or profession regulated by the division; and

(c) one member who is a resident lawyer currently licensed to practice law in this state who shall serve as chair of the special appeals board.

(3) The special appeals board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its proceedings.

(4) (a) Within a reasonable amount of time following the conclusion of a hearing before a special appeals board, the board shall enter an order based upon the record developed at the hearing. The order shall state whether a legal basis exists for denying the application for an initial license or for renewal or reinstatement of a license that is the subject of the appeal. The order is not subject to further agency review.

(b) The division or the applicant may obtain judicial review of the decision of the special appeals board in accordance with Sections 63G-4-401 and 63G-4-403.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) If an applicant under Subsection (1) is not given a special appeals board, the applicant shall be given agency review under the ordinary agency review procedures specified by rule.

Amended by Chapter 286, 2010 General Session

58-1-403. Minimum 90-day suspension.

A license may not be reinstated subsequent to action taken under Section 58-1-401 within 90 days after the action has been taken, unless the division in collaboration with the appropriate board imposes other conditions.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-404. Diversion -- Procedure.

(1) As used in this section, "diversion" means suspending action to discipline a licensee who is or could be charged in a Notice of Agency Action with certain offenses within the category of unprofessional or unlawful conduct on the condition that the licensee agrees to participate in an educational or rehabilitation program or fulfill some other condition.

(2) (a) (i) The director may establish a diversion advisory committee for each occupation or profession or similar groups of occupations or professions licensed by the division.

(ii) The committees shall assist the director in the administration of this section.

(b) (i) Each committee shall consist of at least three licensees from the same or similar occupation or profession as the person whose conduct is the subject of the committee's consideration.

(ii) The director shall appoint the members of a diversion advisory committee from nominations submitted by the corresponding board established for the same or similar occupation or profession under Section 58-1-201 or from other qualified nominees developed by or submitted to the division.

(iii) Committee members may not serve concurrently as members of the corresponding board.

(iv) Committee members shall serve voluntarily without remuneration.

(v) The director may:

(A) dissolve a diversion advisory committee;

(B) remove or request the replacement of a member of a committee; and

(C) establish procedures that are necessary and proper for a committee's administration.

(3) The director may, after consultation with the appropriate diversion advisory committee and by written agreement with the licensee, divert the licensee to a diversion program:

(a) at any time after receipt by the division of a complaint against the licensee when no adjudicative proceeding has been commenced;

(b) at any time prior to the conclusion of a hearing under Section 63G-4-206 when an adjudicative proceeding has been commenced against the licensee; or

(c) after a self-referral by a licensee who is not the subject of a current investigation, complaint, or adjudicative proceeding.

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall define by rule the particular offenses within the category of unprofessional or unlawful conduct that may be subject to diversion.

(b) A licensee may be eligible for a diversion program only once for the same or similar offense, whether the diversion program was in this state or another jurisdiction, and is not eligible if previously disciplined by the division, by a licensing agency of another state, or by a federal government agency for the same or a similar offense.

(c) The term of a diversion agreement shall be five years or less, but may be extended for an additional period of time as agreed to by the parties in writing.

(d) A decision by the director not to divert a licensee is not subject to appeal or judicial review.

(5) A licensee may be represented by counsel:

(a) during the negotiations for diversion;

(b) at the time of the execution of the diversion agreement; and

(c) at each hearing before the director relating to a diversion program.

(6) (a) As used in this section, "diversion agreement" means a written agreement between the division, through its director, and the licensee, which specifies formal terms and conditions the licensee must fulfill in order to comply with the

diversion program.

(b) (i) A diversion agreement shall contain a full detailed statement of the requirements agreed to by the licensee and a full detailed stipulation of the facts upon which the diversion agreement is premised.

(ii) The facts stipulated in the diversion agreement shall constitute binding admissions of the licensee:

(A) in a proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion agreement and impose disciplinary sanctions against the licensee; and

(B) in a disciplinary proceeding based on unprofessional or unlawful conduct that is not the basis of the diversion agreement.

(c) The diversion agreement shall provide that if the licensee makes an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the diversion agreement and issue an order of license revocation.

(d) (i) The diversion agreement shall provide that if the licensee fails to comply with its terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the diversion agreement and issue an order of license suspension, which shall be stayed in favor of an order of probation having the same terms as those that comprised the diversion agreement.

(ii) The division may waive and not include as probationary requirements each term of the diversion agreement it does not consider necessary to protect the public.

(iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).

(e) The division director may not approve a diversion agreement unless the licensee, as part of the diversion agreement:

(i) knowingly and intelligently waives the right to a hearing under Title 63G, Chapter 4, Administrative Procedures Act, for the conduct upon which the diversion agreement was premised;

(ii) agrees to be subject to the procedures and remedies set forth in this section;

(iii) acknowledges an understanding of the consequences of making an intentional misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and

(iv) acknowledges an understanding of the consequences of failing to comply with the terms of the diversion agreement.

(7) (a) If the division and the licensee enter into a diversion agreement after the division has commenced an adjudicative proceeding against the licensee, the director shall stay that proceeding pending completion of the diversion agreement.

(b) The order staying the adjudicative proceeding shall be filed in that proceeding and may reference the diversion agreement.

(8) (a) Upon successful completion of a diversion agreement, the director shall dismiss each charge under the director's jurisdiction of unprofessional or unlawful conduct that was filed against the licensee.

(b) Whether or not an adjudicative proceeding had been commenced against the licensee, the division may not thereafter subject the licensee to disciplinary action for the conduct that formed the basis of the completed diversion agreement.

(c) Neither the execution of a diversion agreement nor the dismissal of filed

charges constitute disciplinary action, and no report of either may be made to disciplinary databases.

(d) The division may consider the completion of a diversion program and the contents of the diversion agreement in determining the appropriate disciplinary action if the licensee is charged in the future with the same or similar conduct.

(e) The order of dismissal shall be filed in the adjudicative proceeding in which the misconduct was charged and may reference the diversion agreement.

(9) (a) Acceptance of the licensee into diversion does not preclude the division from investigating or continuing to investigate the licensee for unlawful or unprofessional conduct committed before, during, or after participation in the diversion program.

(b) Acceptance of the licensee into diversion does not preclude the division from taking disciplinary action or continuing to take disciplinary action against the licensee for unlawful or unprofessional conduct committed before, during, or after participation in the diversion program, except for that conduct that formed the basis for the diversion agreement.

(c) A licensee terminated from the diversion program for failure to comply with the diversion agreement is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program, including violations identified in the diversion agreement.

(10) The classification, retention, and disclosure of records relating to a licensee's participation in the diversion program is governed by Title 63G, Chapter 2, Government Records Access and Management Act, except that a provision in the diversion agreement that addresses access to or release of diversion records regarding the licensee shall govern the access to and release of those records.

(11) Notwithstanding any other provision of this section, the fact that the licensee completed a diversion program and the contents of the diversion agreement itself may be considered by the division in determining the appropriate disciplinary action if the licensee is charged in the future with the same or similar conduct.

(12) Meetings regarding the diversion program are not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(13) (a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement, the director shall cause to be served upon the licensee an order to show cause specifying the information relied upon by the director and setting a time and place for a hearing to determine whether or not the licensee made the intentional material misrepresentation of fact and whether the agreement should be terminated on that ground.

(b) Proceedings to terminate a diversion agreement on the grounds that the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement and to issue an order of license revocation shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except as follows:

(i) the notice of agency action shall be in the form of an order to show cause, which shall contain all of the information specified in Subsection 63G-4-201(2), except a statement that a written response to the order to show cause is required;

(ii) no written response to the order to show cause is required;

(iii) discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence on behalf of either party and all parties shall have access to information contained in the division's diversion file to the extent permitted by law;

(iv) the hearing shall be held only after timely notice to all parties; and

(v) an agency review or reconsideration of an order terminating a diversion agreement or of an order of license revocation pursuant to this Subsection (13) shall be limited to the division director's findings of fact, conclusions of law, and order that arose out of the order to show cause proceeding.

(c) Upon finding the licensee made an intentional material misrepresentation of fact in the stipulation of facts contained in the diversion agreement and that terminating the agreement is in the best interest of the public, and issuing an order to that effect, the director shall issue an order of license revocation, revoking the licensee's professional license.

(d) The order terminating the diversion agreement and the order of license revocation shall include findings of fact and conclusions of law as determined by the director following the hearing or as otherwise stipulated and agreed to by the parties.

(e) If the diversion agreement being terminated was entered into after the division had commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall be considered to be merged into the order of license revocation and it may not constitute a basis for a separate disciplinary action against the licensee.

(f) The order terminating the diversion agreement and the order of license revocation shall notify the licensee of the right to request agency review or reconsideration.

(14) (a) If, during the course of the diversion agreement, information is brought to the attention of the director that the licensee has violated the diversion agreement and if it appears in the best interest of the public to proceed with charges, the director, after consultation with the diversion advisory committee, shall cause to be served upon the licensee an order to show cause specifying the facts relied upon by the director and setting a time and place for a hearing to determine whether or not the licensee has violated the diversion agreement and whether the agreement should be terminated.

(b) Proceedings to terminate a diversion agreement as described in Subsection (14)(c) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except as follows:

(i) the notice of agency action shall be in the form of an order to show cause, which shall contain all of the information specified in Subsection 63G-4-201(2), except a statement that a written response to the order to show cause is required;

(ii) no written response to the order to show cause shall be required;

(iii) discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence on behalf of either party and all parties shall have access to information contained in the division's diversion file to the extent permitted by law;

(iv) the hearing shall be held only after timely notice to all parties; and

(v) an agency review or reconsideration of an order terminating a diversion

agreement or of an order of license suspension and probation pursuant to this Subsection (14) shall be limited to the division director's findings of fact, conclusions of law, and order that arose out of the order to show cause proceeding.

(c) (i) Upon finding the licensee has violated the diversion agreement by conduct that is entirely the same or similar to the conduct upon which the diversion agreement is premised, or by violating a compliance provision contained in the diversion agreement, and further finding that terminating the agreement is in the best interest of the public, and after issuing an order to that effect, the director shall issue an order of probation, consisting of the same terms as those which comprised the diversion agreement.

(ii) Upon finding that the licensee has violated the diversion agreement by conduct that includes conduct that is not the same or similar to the conduct upon which the diversion agreement is premised, and further finding that terminating the agreement is in the best interest of the public, and after issuing an order to that effect, the director shall, after notice of opportunity to be heard is provided to the licensee, issue an order imposing each disciplinary sanction the division deems appropriate, including suspension, public reprimand, a fine, probation, or revocation of licensure.

(iii) The period of probation shall be the time period which remained under the diversion agreement, or five years from the date of the order of license suspension and probation, whichever is longer, unless otherwise agreed by the parties.

(iv) The period of probation is tolled during the time the licensee does not have an active license in the state.

(d) (i) The order terminating the diversion agreement and the order of license suspension and probation shall include findings of fact and conclusions of law as determined by the director following the hearing or as otherwise stipulated and agreed to by the parties.

(ii) The findings of fact may include those facts to which the licensee stipulated in the diversion agreement and additional facts as the director may determine in the course of the hearing.

(e) If the diversion agreement being terminated was entered into after the division had commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall be considered to be merged into the order of license suspension and probation and it may not constitute a basis for separate disciplinary action against the licensee.

(f) The order terminating the diversion agreement and the order of license suspension and probation shall notify the licensee of the right to request agency review or reconsideration.

(g) (i) The terms and conditions of the order of license suspension and probation may be amended by order of the director, pursuant to motion or stipulation of the parties.

(ii) The order of the director on the motion shall not be subject to agency review, but is subject to agency reconsideration under Section 63G-4-302.

(h) (i) If, during the course of probation, the director has reason to believe the licensee has violated the order of probation, the director shall cause to be served upon the licensee an order to show cause why the probation should not be terminated and why each additional disciplinary sanction the division deems appropriate should not be imposed, including suspension, public reprimand, a fine, or revocation of licensure.

(ii) The order to show cause shall specify the facts relied upon by the director and shall set a time and place for hearing before the director to determine whether or not the licensee has violated the order of probation, whether that order should be terminated, and why each additional disciplinary sanction the division deems appropriate should not be imposed, including suspension, public reprimand, a fine, or revocation of licensure.

(15) (a) Nothing in this section precludes the division from issuing an emergency order pursuant to Section 63G-4-502.

(b) If the division issues an emergency order against a licensee who is subject to a diversion agreement with the division, that diversion agreement shall be immediately and automatically terminated upon the issuance of the emergency order, without requiring compliance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(c) (i) A licensee whose diversion agreement has been terminated pursuant to Subsection (15)(b) is entitled, upon request, to a posttermination hearing to challenge the termination of the diversion agreement.

(ii) The request shall be considered a request for agency action and shall comply with the requirements of Subsection 63G-4-201(3).

(iii) The division shall uphold the termination of the diversion agreement if it finds that:

(A) the licensee violated the diversion agreement; and

(B) it is in the best interest of the public to terminate the diversion agreement.

(16) The administrative statute of limitations for taking disciplinary action described in Subsection 58-1-401(6) shall be tolled during a diversion program.

Amended by Chapter 262, 2013 General Session

58-1-405. Provisions of volunteer health or veterinary services -- Division authority.

In accordance with Section 26-49-205, the division may pursue actions against a volunteer health practitioner operating under Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

Enacted by Chapter 242, 2008 General Session

58-1-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) (i) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law; or

(ii) for a licensee who has had a license under this title reinstated following disciplinary action, practicing the same occupation or profession using a different name than the name used before the disciplinary action, except as permitted by law and after notice to, and approval by, the division;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law;

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission; or

(f) (i) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:

(A) without prescriptive authority conferred by a license issued under this title, or by an exemption to licensure under this title; or

(B) with prescriptive authority conferred by an exception issued under this title or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and

(ii) Subsection (1)(f)(i) does not apply to treatment rendered in an emergency, on-call or cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this title, or is exempt from licensure under this title.

(2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

(c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial

of licensure or disciplinary proceedings under Section 58-1-401;

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;

(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

(h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;

(i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license;

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license;

(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;

(m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:

(i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or

(ii) with prescriptive authority conferred by an exception issued under this title, or a multi-state practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;

(n) violating a provision of Section 58-1-501.5; or

(o) violating the terms of an order governing a license.

Amended by Chapter 408, 2014 General Session

58-1-501.3. Health professional prescribing exceptions for expedited partner therapy for sexually transmitted diseases.

(1) For purposes of this section:

(a) "Drug to treat a sexually transmitted disease" means a drug:

(i) as defined in Section 58-17b-102; and

(ii) that is:

(A) an antibiotic; and

(B) prescribed in accordance with guidelines from the Centers for Disease Control and Prevention for patient delivered expedited partner therapy in the

management of sexually transmitted disease.

(b) "Partner" means a person:

(i) with whom a practitioner does not have a bonafide practitioner-patient relationship; and

(ii) who is identified as, or claims to be a sexual partner of a patient.

(c) "Patient" means a person who:

(i) has a sexually transmitted disease; and

(ii) has a bonafide practitioner-patient relationship with a practitioner.

(d) "Sexually transmitted disease" means:

(i) gonorrhea; or

(ii) chlamydia.

(2) This section does not require a practitioner or a licensee under this chapter to prescribe or dispense a drug to treat a sexually transmitted disease for patient delivered expedited partner therapy. A practitioner's or licensee's decision to use expedited partner therapy as allowed by this section is voluntary.

(3) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, it is not unlawful conduct or unprofessional conduct, and it does not violate the provisions of this chapter if:

(a) a practitioner, in accordance with this Subsection (3):

(i) issues a prescription for a drug to treat a sexually transmitted disease to a partner by:

(A) writing "partner of (patient name)" on the prescription order; and

(B) giving the partner's prescription to the patient for subsequent use by the partner; or

(ii) notwithstanding Section 58-17b-610, dispenses a drug sample to treat a sexually transmitted disease to the patient for the subsequent use of the partner; or

(b) a pharmacist, in accordance with this Subsection (3), dispenses a prescription drug for the treatment of a sexually transmitted disease to:

(i) a person who:

(A) claims to be a partner; and

(B) presents a prescription for the drug to the pharmacist which is written for the unnamed partner of a named patient;

(ii) the patient for the subsequent use by the unnamed partner; or

(iii) an agent of the patient or partner.

(4) (a) For purposes of Subsection (3), and notwithstanding Section 58-17b-602:

(i) the partner does not have to be identified on the prescription order by information that would disclose the identity of the partner; and

(ii) when dispensing a drug to treat a sexually transmitted disease directly to the partner, the patient's identifying information may, but does not need to, be included on the partner's drug label.

(b) Information provided by a pharmacist to a patient or the patient's agent for subsequent use by a partner satisfies the requirements of patient counseling for both the patient and the partner under Section 58-17b-613.

(5) (a) The Legislature finds that the prevention and treatment of sexually transmitted diseases in the state is a compelling public health issue.

(b) A practitioner or licensee under this chapter is not liable for a medical

malpractice action if the use of expedited partner therapy is in compliance with this section, except for those acts which are grossly negligent or willful and wanton.

Enacted by Chapter 151, 2009 General Session

58-1-501.5. Anatomic pathology services -- Billing violations.

(1) As used in this section, the following definitions apply:

(a) (i) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" means:

(A) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(B) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(C) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(D) subcellular pathology and molecular pathology; and

(E) blood bank services performed by a pathologist.

(ii) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" does not include the initial collection or packaging of a sample for transport.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in Section 26-21-2.

(d) "Health care provider" includes:

(i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;

(ii) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;

(iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;

(iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

(v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;

(vi) an osteopathic physician and surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;

(vii) a podiatric physician licensed under Chapter 5a, Podiatric Physician Licensing Act;

(viii) a physician and surgeon licensed under Chapter 67, Utah Medical Practice

Act; and

(ix) a physician assistant licensed under Chapter 70a, Physician Assistant Act.

(e) "Insurer" includes:

(i) any entity offering accident and health insurance as defined in Section 31A-1-301;

(ii) workers' compensation benefits;

(iii) a health maintenance organization; or

(iv) any self-insurance, as defined in Section 31A-1-301, that offers health care insurance or benefits.

(2) (a) A health care provider who orders anatomic pathology services for a patient from an independent physician or laboratory may not directly or indirectly mark up, charge a commission, or make a profit on the anatomic pathology service provided by the independent physician or laboratory.

(b) Nothing in Subsection (2)(a):

(i) restricts the ability of a health care provider, who has not performed or supervised either the technical or professional component of the anatomic pathology service, to obtain payment for services related solely to the collection and packaging of a sample and administrative billing costs; or

(ii) restricts the ability of the lab function in the Department of Health to bill for services.

(3) A health care provider when billing a patient directly for anatomic pathology services provided by an independent physician or laboratory shall furnish an itemized bill which conforms with the billing practices of the American Medical Association that conspicuously discloses the charge for each anatomic pathology service, physician or laboratory name, and address for each anatomic pathology service rendered to the patient by the physician or laboratory that performed the anatomic pathology service.

(4) The disclosure to be made under Subsection (3) shall not be required when the anatomic pathology service is being ordered by a hospital, a laboratory performing either the professional or technical component of the service, or a physician performing either the professional or technical component of the service, a public health clinic, or a state or federal agency.

(5) Failure to comply with the requirements of this section shall be considered to be unprofessional conduct.

Amended by Chapter 250, 2008 General Session

58-1-501.6. Health care provider advertisements and disclosure -- Unprofessional conduct.

For purposes of this section:

(1) (a) "Advertisement" includes:

(i) billboards;

(ii) written documents such as:

(A) brochures;

(B) pamphlets;

(C) direct mail solicitations;

(D) radio, television, and telephone solicitation scripts; and

- (E) telephone directories;
- (iii) media, including television, radio, and Internet websites; and
- (iv) any other means of promotion intended to directly or indirectly induce a person to enter into an agreement for services with a health care provider.
- (b) "Advertisement" does not include materials that provide information about health care provider networks established by health insurance carriers.
- (2) "Health care provider" means a natural person who is:
 - (a) defined as a health care provider in Section 78B-3-403; and
 - (b) licensed under this title.
- (3) (a) This section does not provide authority for a health care provider to advertise the services offered by the health care provider.
- (b) If a health care provider's licensing authority and professional ethics permit the health care provider to advertise, the provisions of this section apply to any advertisement for the health care provider's services, on or after July 1, 2011.
- (4) An advertisement for a health care provider's services that includes the health care provider's name shall identify the license type, as used by the division, under which the health care provider is practicing.
- (5) (a) A physician licensed under Chapter 67, Utah Medical Practice Act, may comply with the requirements of this section by using any one of the designations in the definitions of "practice of medicine" in Section 58-67-102.
- (b) A physician licensed under Chapter 68, Utah Osteopathic Medical Practice Act, may comply with this section by using any of the designations in the definition of "practice of osteopathic medicine" in Section 58-68-102.
- (6) It is unprofessional conduct if a health care provider violates this section.

Enacted by Chapter 139, 2011 General Session

**58-1-501.7. Standards of conduct for prescription drug education --
Academic and commercial detailing.**

- (1) For purposes of this section:
 - (a) "Academic detailing":
 - (i) means a health care provider who is licensed under this title to prescribe or dispense a prescription drug and employed by someone other than a pharmaceutical manufacturer:
 - (A) for the purpose of countering information provided in commercial detailing; and
 - (B) to disseminate educational information about prescription drugs to other health care providers in an effort to better align clinical practice with scientific research; and
 - (ii) does not include a health care provider who:
 - (A) is disseminating educational information about a prescription drug as part of teaching or supervising students or graduate medical education students at an institution of higher education or through a medical residency program;
 - (B) is disseminating educational information about a prescription drug to a patient or a patient's representative; or
 - (C) is acting within the scope of practice for the health care provider regarding

the prescribing or dispensing of a prescription drug.

(b) "Commercial detailing" means an educational practice employed by a pharmaceutical manufacturer in which clinical information and evidence about a prescription drug is shared with health care professionals.

(c) "Manufacture" is as defined in Section 58-37-2.

(d) "Pharmaceutical manufacturer" is a person who manufactures a prescription drug.

(2) (a) Except as provided in Subsection (3), the provisions of this section apply to an academic detailer beginning July 1, 2013.

(b) An academic detailer and a commercial detailer who educate another health care provider about prescription drugs through written or oral educational material is subject to federal regulations regarding:

(i) false and misleading advertising in 21 C.F.R., Part 201 (2007);

(ii) prescription drug advertising in 21 C.F.R., Part 202 (2007); and

(iii) the federal Office of the Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers issued in April 2003, as amended.

(c) A person who is injured by a violation of this section has a private right of action against a person engaged in academic detailing, if:

(i) the actions of the person engaged in academic detailing, that are a violation of this section, are:

(A) the result of gross negligence by the person; or

(B) willful and wanton behavior by the person; and

(ii) the damages to the person are reasonable, foreseeable, and proximately caused by the violations of this section.

(3) (a) For purposes of this Subsection, "accident and health insurer":

(i) is as defined in Section 31A-1-301; and

(ii) includes a self-funded health benefit plan and an administrator for a self-funded health benefit plan.

(b) This section does not apply to a person who engages in academic detailing if that person is engaged in academic detailing on behalf of:

(i) an accident and health insurer, including when an accident and health insurer contracts with or offers:

(A) the state Medicaid program, including the Primary Care Network within the state's Medicaid program;

(B) the Children's Health Insurance Program created in Section 26-40-103;

(C) the state's high risk insurance program created in Section 31A-29-104;

(D) a Medicare plan; and

(E) a Medicare supplement plan;

(ii) a hospital as defined in Section 26-21-2;

(iii) any class of pharmacy as defined in Section 58-17b-102, including any affiliated pharmacies;

(iv) an integrated health system as defined in Section 13-5b-102; or

(v) a medical clinic.

(c) This section does not apply to communicating or disseminating information about a prescription drug for the purpose of conducting research using prescription drugs at a health care facility as defined in Section 26-21-2, or a medical clinic.

Enacted by Chapter 100, 2013 General Session

58-1-501.8. Occupational and professional identification of health care providers -- Unlawful and unprofessional conduct -- Penalties.

- (1) For purposes of this section:
 - (a) "Badge" means a tag or badge in plain view:
 - (i) attached to a health care provider's clothing; or
 - (ii) hanging from a lanyard around a health care provider's neck.
 - (b) "Clothing" means a health care provider's outermost article of clothing that is visible to others.
 - (c) "Deceptive or misleading conduct" means any affirmative communication or representation that falsely states, describes, holds out, or details an individual's licensure, training, education, or profession.
 - (d) "Health care provider" means a natural person who is:
 - (i) defined as a health care provider in Section 78B-3-403; and
 - (ii) licensed under this title.
 - (e) "Identification" means a badge or stitching, or permanent writing in plain view on clothing that:
 - (i) includes the health care provider's name;
 - (ii) includes the license type held by the health care provider;
 - (iii) is worn in a manner that is visible and apparent to others; and
 - (iv) contains the information required by Subsections (1)(e)(i) and (ii):
 - (A) in a manner and of sufficient size that can be easily read; and
 - (B) on both sides of the badge, unless the badge or tag is attached to clothing in a way that prevents the badge from rotating.
 - (f) "License type" means a designation of the license type that satisfies the requirements of Section 58-1-501.6.
 - (g) "Patient encounter" means an interaction in a health care facility, health care clinic, or office in which a patient can see a health care provider delivering services directly to a patient.
- (2) Beginning January 1, 2015, except as provided in Subsections (3) and (4), a health care provider shall wear identification during any patient encounter.
- (3) A health care provider's identification may be covered if required under sterilization or isolation protocols.
- (4) A health care provider is not required to wear identification:
 - (a) if wearing identification would jeopardize the health care provider's safety; or
 - (b) (i) in an office in which:
 - (A) the license type and names of all health care providers working in the office are displayed on the office door; or
 - (B) each health care provider working in the office has the health care provider's license posted prominently in the office and readily visible to a patient; and
 - (ii) if the office is an office:
 - (A) of a solo health care provider; or
 - (B) of a single type of health care provider.
- (5) An individual who is a student or is in training to obtain a license as a health

care provider shall:

- (a) wear identification during patient encounters that identifies the person as in training, or a student, for the particular license type; and
- (b) otherwise comply with the provisions of this section.
- (6) It is unprofessional conduct if a health care provider violates this section.
- (7) It is unlawful conduct if an individual:
 - (a) wears identification in a patient encounter that suggests that the individual is practicing or engaging in an occupation or profession that the individual may not lawfully practice or engage in under this title; or
 - (b) engages in deceptive or misleading conduct.
- (8) An individual who violates this section is subject to Section 58-1-502.

Enacted by Chapter 99, 2014 General Session

58-1-502. Unlawful and unprofessional conduct -- Penalties.

(1) Unless otherwise specified in this title, a person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.

(2) (a) In addition to any other statutory penalty for a violation related to a specific occupation or profession regulated by this title, if upon inspection or investigation, the division concludes that a person has violated Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly:

(i) issue a citation to the person according to this section and any pertinent rules;

(ii) attempt to negotiate a stipulated settlement; or

(iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(b) (i) The division may assess a fine under this Subsection (2) against a person who violates Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections, as evidenced by:

(A) an uncontested citation;

(B) a stipulated settlement; or

(C) a finding of a violation in an adjudicative proceeding.

(ii) The division may, in addition to or in lieu of a fine under Subsection (2)(b)(i), order the person to cease and desist from violating Subsection 58-1-501(1)(a), (1)(c), or (2)(o), or a rule or order issued with respect to those subsections.

(c) Except for a cease and desist order, the division may not assess the licensure sanctions cited in Section 58-1-401 through a citation.

(d) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time specified in the citation.

(e) The division may issue a notice in lieu of a citation.

(f) (i) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(h) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(i) The division may not issue a citation under this section after the expiration of six months following the occurrence of a violation.

(j) The director or the director's designee shall assess fines according to the following:

(i) for the first offense handled pursuant to Subsection (2)(a), a fine of up to \$1,000;

(ii) for a second offense handled pursuant to Subsection (2)(a), a fine of up to \$2,000; and

(iii) for each subsequent offense handled pursuant to Subsection (2)(a), a fine of up to \$2,000 for each day of continued offense.

(3) (a) An action for a first or second offense that has not yet resulted in a final order of the division may not preclude initiation of a subsequent action for a second or subsequent offense during the pendency of a preceding action.

(b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(4) (a) The director may collect a penalty that is not paid by:

(i) either referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect the penalty.

(c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section.

Amended by Chapter 262, 2013 General Session

58-1-503. Maximum civil penalty for violation of court order.

(1) If any written order issued under this title or if an injunction or temporary restraining order issued by a court of competent jurisdiction relating to this title is violated, the court may impose a civil penalty of not more than \$2,000 for each day the written order, injunction, or temporary restraining order is violated, if the person in

violation has received notice of the written order, injunction, or temporary restraining order.

(2) All penalties ordered under this section shall be deposited into the General Fund.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-504. Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this title if so ordered by a court.

Enacted by Chapter 232, 1997 General Session

58-1-505. Cosmetic medical procedure supervisor.

(1) For purposes of this section and Section 58-1-506:

(a) "Cosmetic medical facility" means a physician's office or a facility that has a supervisor who performs the supervision required in Section 58-1-506.

(b) "Supervisor" means:

(i) a physician with an unrestricted license under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, who is acting within the scope of the practice of medicine, as defined in Section 58-67-102; and

(ii) an advanced practice registered nurse with an unrestricted license under Chapter 31b, Nurse Practice Act, who is acting within the scope of practice of advanced practice registered nursing, as defined in Section 58-31b-102.

(2) (a) An individual authorized by this title to perform a cosmetic medical procedure shall be supervised by a supervisor when performing a medical procedure.

(b) Cosmetic medical procedures may only be performed in a cosmetic medical facility.

(c) A supervisor may delegate the supervisory role only to another individual who is qualified as a supervisor.

Enacted by Chapter 362, 2012 General Session

58-1-506. Supervision of cosmetic medical procedures.

(1) For purposes of this section:

(a) "Delegation group A" means the following who are licensed under this title, acting within their respective scope of practice, and qualified under Subsections (2)(f)(i) and (iii):

(i) a physician assistant, if acting under the supervision of a physician and the procedure is included in the delegation of services agreement as defined in Section 58-70a-102;

(ii) a registered nurse;

(iii) a master esthetician; and

(iv) an electrologist, if evaluating for or performing laser hair removal.

(b) "Delegation group B" means:

(i) a practical nurse or an esthetician who is licensed under this title, acting

within their respective scope of practice, and qualified under Subsections (2)(f)(i) and (iii); and

(ii) a medical assistant who is qualified under Subsections (2)(f)(i) and (iii).

(c) "Direct cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

and

(ii) is present and available for a face-to-face communication with the supervisee when and where a cosmetic medical procedure is performed.

(d) "General cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

(ii) is available in a timely and appropriate manner in person to evaluate and initiate care for a patient with a suspected adverse reaction or complication; and

(iii) is located within 60 minutes or 60 miles of the cosmetic medical facility.

(e) "Indirect cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

(ii) has given written instructions to the person being supervised;

(iii) is present within the cosmetic medical facility in which the person being supervised is providing services; and

(iv) is available to:

(A) provide immediate face-to-face communication with the person being supervised; and

(B) evaluate the patient, as necessary.

(f) "Hair removal review" means:

(i) conducting an in-person, face-to-face interview of a patient based on the responses provided by the patient to a detailed medical history assessment that was prepared by the supervisor;

(ii) evaluating for contraindications and conditions that are part of the treatment plan; and

(iii) if the patient history or patient presentation deviates in any way from the treatment plan, referring the patient to the supervisor and receiving clearance from the supervisor before starting the treatment.

(2) A supervisor supervising a nonablative cosmetic medical procedure for hair removal shall:

(a) have an unrestricted license to practice medicine or advanced practice registered nursing in the state;

(b) develop the medical treatment plan for the procedure;

(c) conduct a hair removal review, or delegate the hair removal review to a member of delegation group A, of the patient prior to initiating treatment or a series of treatments;

(d) personally perform the nonablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;

(e) during the nonablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure, except physician assistants, who shall be supervised as provided in Chapter 70a, Physician Assistant Act, and indirect cosmetic medical

procedure supervision to individuals in delegation group B performing the procedure;
and

(f) verify that a person to whom the supervisor delegates an evaluation under Subsection (2)(c) or delegates a procedure under Subsection (2)(d) or (3)(b)(ii):

(i) has received appropriate training regarding the medical procedures developed under Subsection (2)(b);

(ii) has an unrestricted license under this title or is performing under the license of the supervising physician and surgeon; and

(iii) has maintained competence to perform the nonablative cosmetic medical procedure through documented education and experience of at least 80 hours, as further defined by rule, regarding:

(A) the appropriate standard of care for performing nonablative cosmetic medical procedures;

(B) physiology of the skin;

(C) skin typing and analysis;

(D) skin conditions, disorders, and diseases;

(E) pre and post procedure care;

(F) infection control;

(G) laser and light physics training;

(H) laser technologies and applications;

(I) safety and maintenance of lasers;

(J) cosmetic medical procedures an individual is permitted to perform under this title;

(K) recognition and appropriate management of complications from a procedure;
and

(L) cardio-pulmonary resuscitation (CPR).

(3) For a nonablative cosmetic medical procedure other than hair removal under Subsection (2):

(a) (i) except as provided in Subsection (3)(a)(ii) and (iii), a physician who has an unrestricted license to practice medicine shall:

(A) develop a treatment plan for the nonablative cosmetic medical procedure;
and

(B) conduct an in-person face-to-face evaluation of the patient prior to the initiation of a treatment protocol or series of treatments;

(ii) a nurse practitioner who has an unrestricted license for advanced practice registered nursing may perform the evaluation and develop the treatment plan under Subsection (3)(a)(i) for nonablative medical procedures other than tattoo removal; or

(iii) a physician assistant acting under the supervision of a physician, with the procedure included in the delegation of service agreement as defined in Section 58-70a-102, may perform the evaluation under Subsection (3)(a)(i)(B) for nonablative medical procedures other than tattoo removal; and

(b) the supervisor supervising the procedure shall:

(i) have an unrestricted license to practice medicine or advanced practice registered nursing;

(ii) personally perform the nonablative cosmetic medical procedure or:

(A) authorize and provide general cosmetic medical procedure supervision for

the nonablative cosmetic medical procedure that is performed by a registered nurse or a master esthetician;

(B) authorize and provide supervision as provided in Chapter 70a, Physician Assistant Act, for the nonablative cosmetic medical procedure that is performed by a physician assistant, if the procedure is included in the delegation of services agreement; or

(C) authorize and provide direct cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by an esthetician; and

(iii) verify that a person to whom the supervisor delegates a procedure under Subsection (3)(b):

(A) has received appropriate training regarding the medical procedures to be performed;

(B) has an unrestricted license and is acting within their scope of practice under this title; and

(C) is qualified under Subsection (2)(f)(iii).

(4) A supervisor performing or supervising a cosmetic medical procedure under Subsection (2) or (3) shall ensure that:

(a) the supervisor's name is prominently posted at the cosmetic medical facility identifying the supervisor;

(b) a copy of the supervisor's license is displayed on the wall of the cosmetic medical facility;

(c) the patient receives written information with the name and licensing information of the supervisor who is supervising the nonablative cosmetic medical procedure and the person who is performing the nonablative cosmetic medical procedure;

(d) the patient is provided with a telephone number that is answered within 24 hours for follow-up communication; and

(e) the cosmetic medical facility's contract with a master esthetician who performs a nonablative cosmetic medical procedure at the facility is kept on the premises of the facility.

(5) Failure to comply with the provisions of this section is unprofessional conduct.

(6) A chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act is not subject to the supervision requirements in this section for a nonablative cosmetic medical procedure for hair removal if the chiropractic physician is acting within the scope of practice of a chiropractic physician and with training specific to nonablative hair removal.

Enacted by Chapter 362, 2012 General Session

58-1-507. Cosmetic medical procedure -- Truth in advertising.

Beginning July 1, 2013, a facility that performs a cosmetic medical procedure as defined in Section 58-67-102 may not advertise or hold itself out to the public as a "medical spa," "medical facility," or "medical clinic" unless the facility has an individual on the premises while a cosmetic medical procedure is performed who is licensed under:

- (1) Chapter 31b, Nurse Practices Act, as an advanced practice registered nurse, practicing as a nurse practitioner;
- (2) Chapter 67, Utah Medical Practice Act; or
- (3) Chapter 68, Utah Osteopathic Medical Practice Act.

Enacted by Chapter 362, 2012 General Session